

Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 199900373-3 Issuance Date: May 25, 2005

Stream: Unnamed Tributary North Fork Closing Date: June 24, 2005

Please address all comments and inquiries to:

U.S. Army USACE of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the USACE request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Mid-Vol Coal Sales, Inc.
Post Office Box 196
Horsepen, Virginia 24619

LOCATION: The proposed project would be located in the in Big Creek District of McDowell County, West Virginia at Latitude 37°16'02" and Longitude 81°31'07" on the United States Geological Survey 7.5-minute Gary Quadrangle. The proposed project would result in disturbances to an unnamed tributary of North Fork of Big Creek approximately 2.2 miles northeast of Brewsterdale, WV. Big Creek exhibits a surface water connection to Dry Branch. Dry Branch exhibits a surface water connection to Jacobs Fork, which ultimately flows into the Tug Fork, a navigable (Section 10) water of the U.S.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place dredged and/or fill material into approximately 2,266 linear feet (0.16 acre) of waters of the U.S. in conjunction with the continued construction, operation and reclamation of the Cactus Ridge Surface Mine [Surface Mining Control and Reclamation Act (SMCRA) Permit S-4019-99]. This existing surface mine covers an area of approximately 681 acres. The SMCRA permit was issued by the West Virginia Department of Environmental Protection on November 16, 2000. The activities resulting in discharges of dredged or fill material into waters of the U.S. associated with the implementation of the surface coal mining operation were subsequently approved by the USACE on December 13, 2000 under the December 13, 1996 Federal Register, Final Notice of Issuance, Reissuance and Modification of the Nationwide Permits (61 FR 65874), Nationwide Permit 21 (1996 NWP 21) and general conditions under the March 9, 2000 Federal Register, Final Notice of Issuance and Modification of Nationwide Permits (65 FR 12818). At that time, the USACE authorized the applicant to construct five valley fills and five associated sediment ponds in 12,545 linear feet (0.96 acre) of waters of the U.S. This USACE permit expired on February 11, 2002. Since the company had commenced activities prior to that date they were provided twelve additional months (February 11, 2003) to complete the activity under the terms and conditions of the 1996 NWP 21. Prior to the expiration of the NWP 21, the applicant had disturbed, mined and reclaimed the majority of the project area. Due to adverse market conditions, mining activities at the site were curtailed in 2003 and reclamation of the site was initiated. The previously authorized Valley Fills 2, 3 and 5 and Sediment Ponds 1, 2, 3 and 5 were constructed and resulted in adverse impacts to 7,785 linear feet of waters of the U.S. Two of the previously authorized valley fills (Valley Fills 1 and 4) and one sediment pond (Pond 4) were not constructed.

Under the current proposal being evaluated by the USACE, the applicant proposes to construct Valley Fill 1 approximately 280 feet downstream from its previously authorized location and raise the top of the fill an additional 100 feet to accommodate the storage of approximately 9.7 million cubic yards of excess overburden material generated by mineral removal operations. This change in the mine plan would eliminate the need for the originally proposed, but not yet constructed, Valley Fill 4 and its associated Sediment Pond 4. Valley Fill 1 would drain a contributing watershed of 202.4 acres. No changes to the existing constructed Sediment Pond 1 are proposed by the applicant. The proposed operation would utilize a combination of area, contour, point removal and auger mining methods to recover coal reserves within the proposed project area. Of the originally permitted 4.3 million tons of coal at the project site, a projected 1.9 million tons of reserves remain to be recovered. According to the applicant, the purpose of the project is to recover the high-grade metallurgical coal reserves from Pocahontas No. 3, 4 and 5 coal seams. To accomplish this, the applicant proposes to construct, operate and reclaim the reactivated Cactus Ridge Surface Mine. Reserves from the project site would be sold on the market to satisfy a currently high demand for coal. Plans for the proposed Cactus Ridge Surface Mine are attached to this public notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall project purpose. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan to this office for review. The applicant proposes to create approximately 3,400 linear feet of ephemeral, intermittent and perennial streams by modifying and enhancing post-reclamation surface channels that run along the perimeter of the mined and reclaimed area. These proposed mitigation channels would be designed and constructed utilizing natural stream design techniques. A 50-foot vegetative riparian zone, consisting of native herbaceous, shrub and tree species, would be established along the created channels. These channels would then connect and discharge into the unnamed tributary of North Fork. Additionally, upon removal of Sediment Pond 1, the affected 942 linear feet of stream channel would be restored to a hydrogeomorphologically stable configuration as close as practical to its approximate original contours, including the establishment of a 50-foot vegetative riparian zone.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the WVDEP.

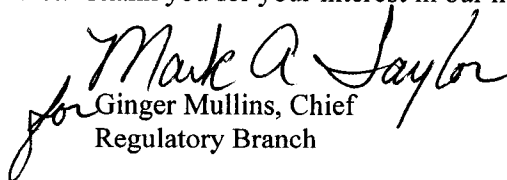
HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. Based on the conclusions made the report titled "A Phase I Archaeological Survey for the Proposed Cactus Ridge Surface Mine (SMA 4019-99) in McDowell County, West Virginia," no prehistoric or historic cultural materials were located during the course of the survey efforts. In a letter dated March 28, 2000, the West Virginia Division of Cultural and History (SHPO) concurred with the conclusions made in the survey report and concluded no known archaeological sites listed on or eligible for inclusion in the NRHP would be affected by this proposed project. A copy of this public notice will be sent to the SHPO for their review. Additional comments concerning archeological sensitivity of a project area should be based upon collected data.

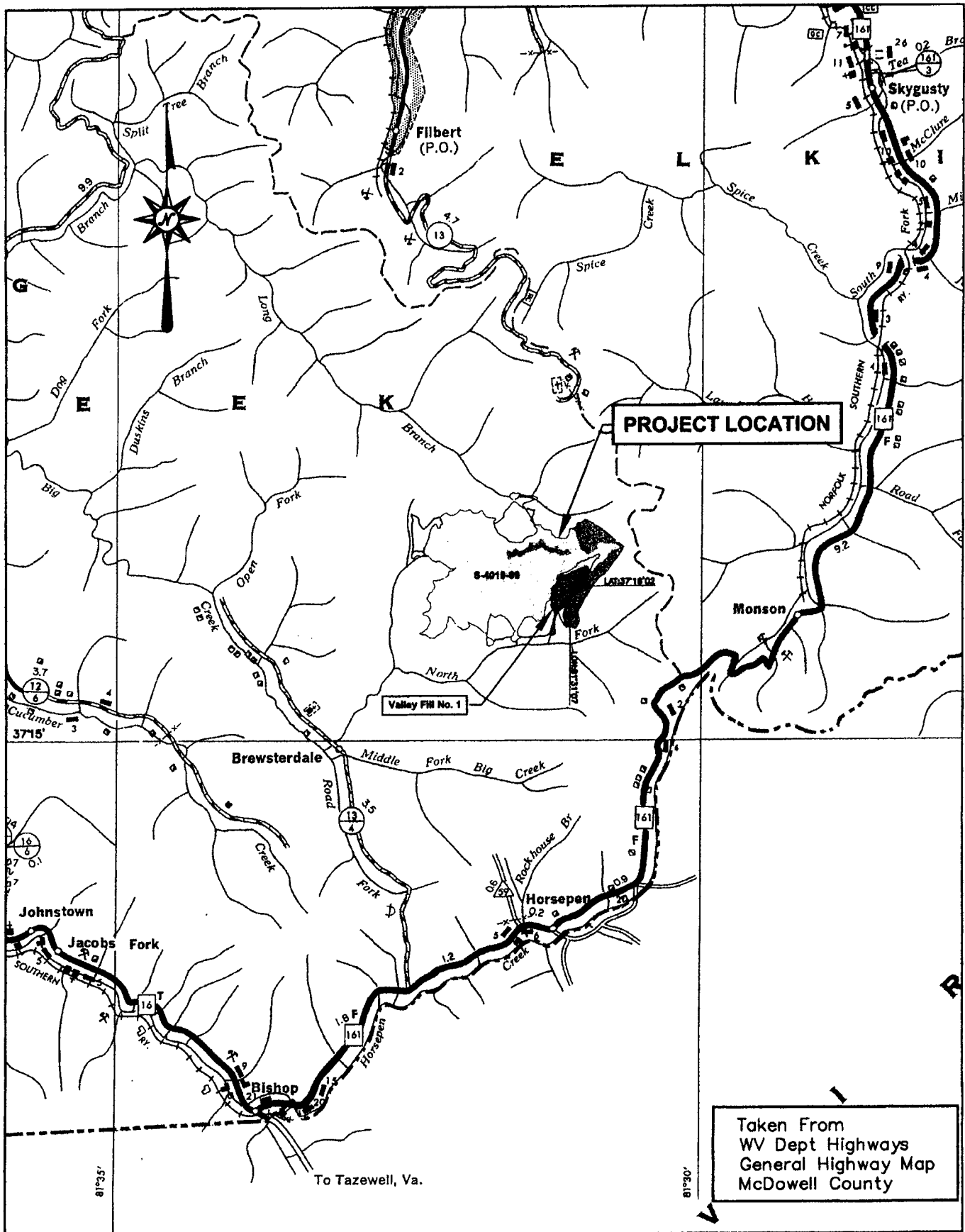
ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. Two options are available to the applicant in order to address Indiana bat concerns. The applicant may conduct a mist net survey from May 15 to August 15 using the mist net protocol outlined in the draft Indiana bat Recovery Plan. If this option is chosen, the applicant must provide the United States Fish and Wildlife Service (Service) with their survey plan for review and approval prior to conducting the survey. Another option is to presume Indiana bats are present and conduct all timber removal on the project area from November 15 to March 31. If this option is chosen, an analysis of the post-project Indiana bat summer habitat must be performed within a two-mile radius of the center point of the project area. If the Service determines the extent of disturbance is not significant to affect the Indiana bat, the project may proceed with seasonal restrictions. Conversely, if the Service determines the extent of disturbance is significant and would likely adversely affect the Indiana bat, a mist net survey can be conducted to determine if the Indiana bats are present. Additionally, abandoned mine portals could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. The applicant must survey the project area for old, abandoned mine portals. If portals appear to have suitable bat habitat characteristics, a Phase I Portal Survey must be prepared for each portal by a qualified mammalogist. At this time, the USACE cannot make a determination regarding the effect the proposed project could potentially have on the aforementioned endangered species. This public notice serves as a request to the Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, USACE Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act. Thank you for your interest in our nation's water resources.


for Ginger Mullins, Chief
Regulatory Branch



CACTUS RIDGE VALLEY FILL NO. 1
MID-VOL COAL SALES, INC.
 P.O. BOX 198
 HORSEPEN, VA 24619

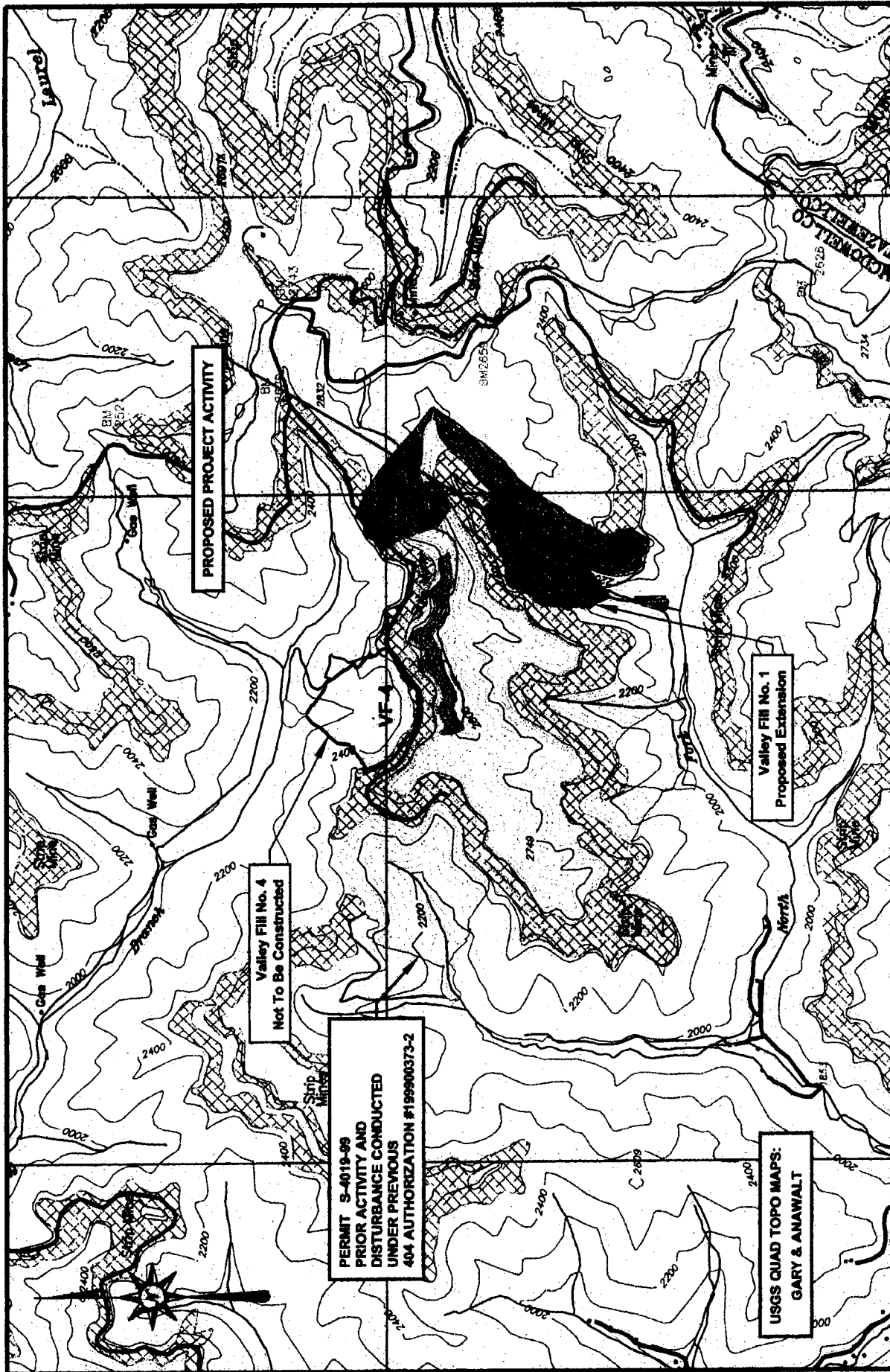
SCALE 1" = 1-MILE
 DATE MARCH 2005
 BY NREI-MOT

EXHIBIT 1

LOCATION MAP

DWG. NO.

24\Draws\27\27-08\Cactus Ridge 404\DOT\Exhibit1



CACTUS RIDGE VALLEY FILL NO. 1 **MID-VOL COAL SALES, INC.**

P.O. BOX 196
HORSEPEN, VA 24619

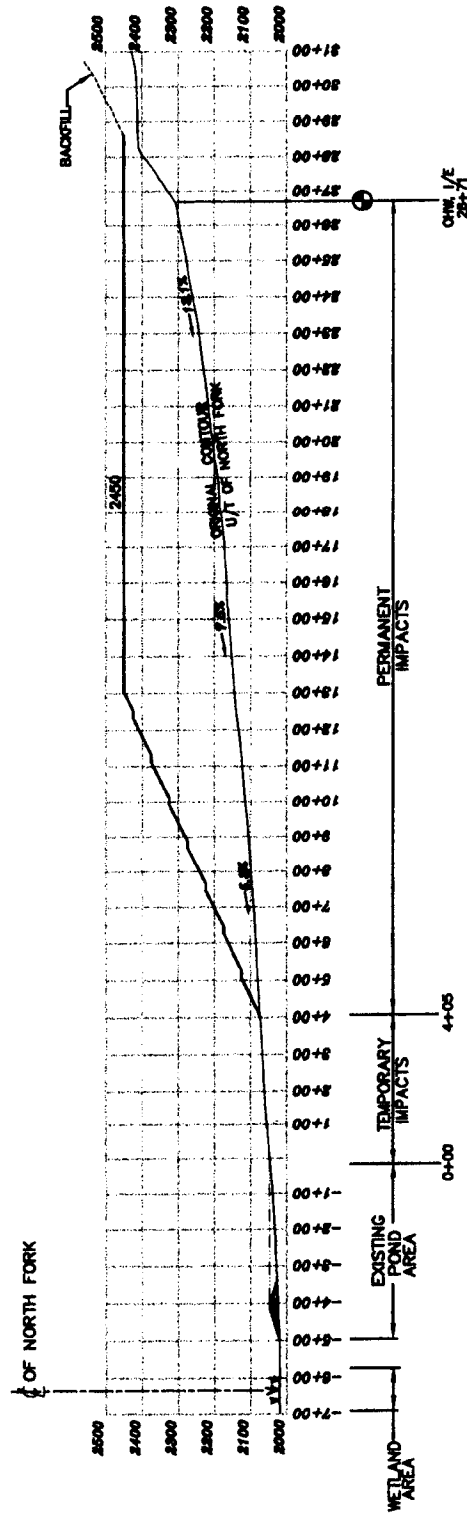
SCALE 1"=2000 FT.

DATE MARCH 2005

BY NREI-MOT

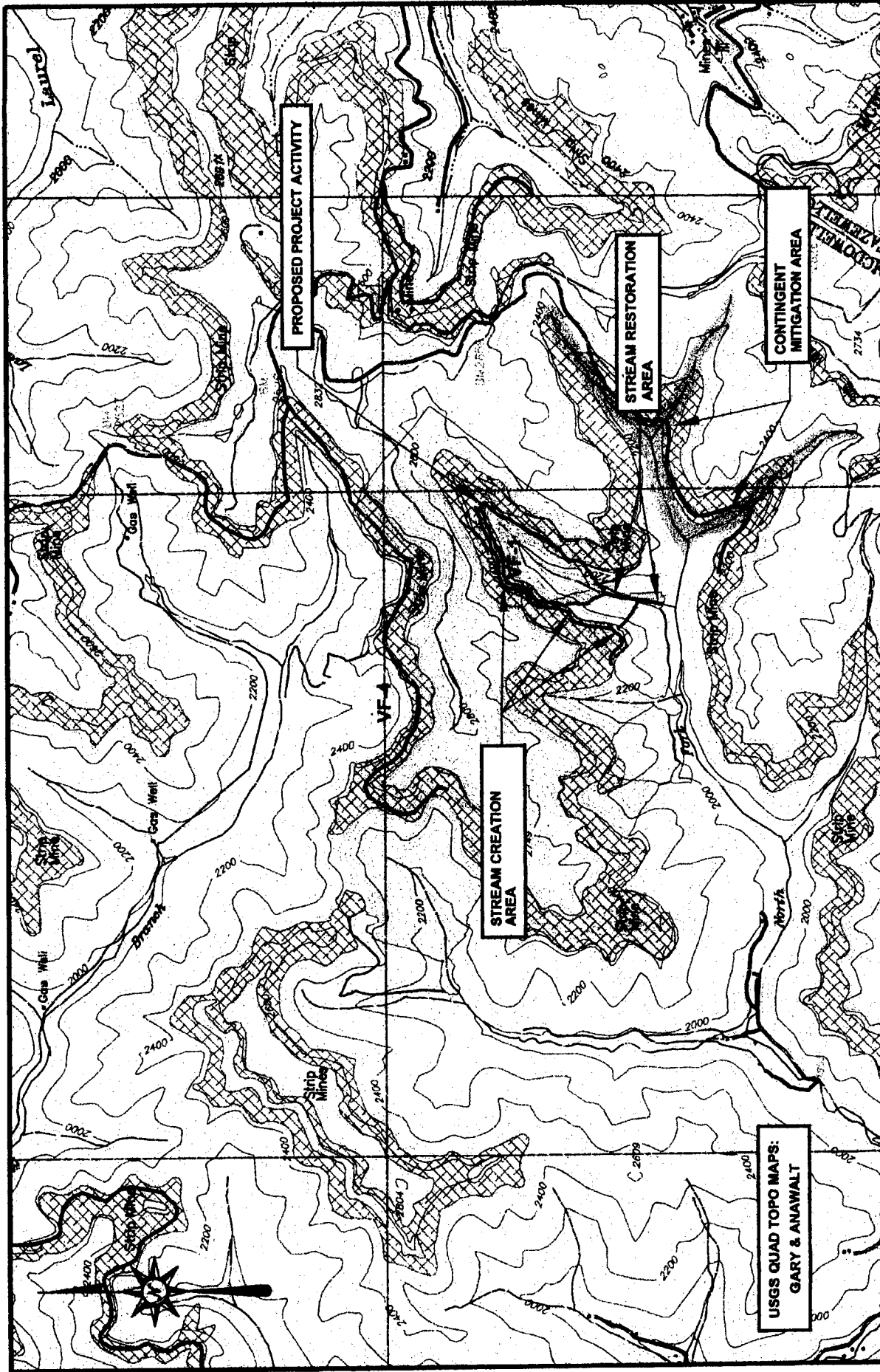
EXHIBIT 2
PROPOSED PROJECT ACTIVITY

DWG. NO. G:\27\27-09\Cactus Ridge 404\MOT\Exhibit2



PROFILE SHOWING REDESIGNED VALLEY FILL NO. 1

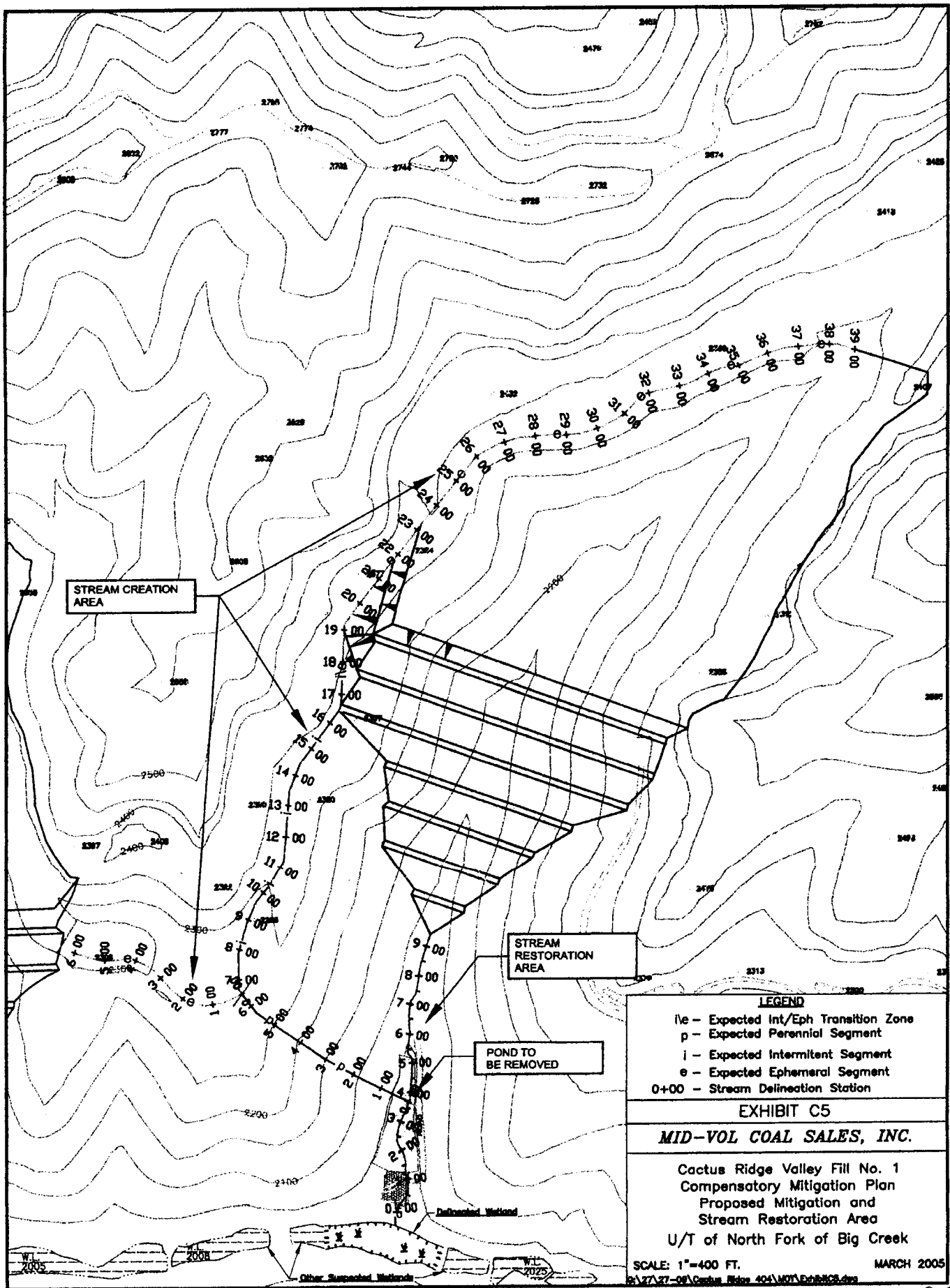
CACTUS RIDGE VALLEY FILL NO. 1 MID-VOL COAL SALES, INC. P.O. BOX 196 HORSEPEN, VA 24619			SCALE 1"=500'	EXHIBIT 11	REDESIGNED VALLEY FILL NO. 1
			DATE MARCH 2005		
			BY DK	DWG. NO.	D:\p\27\27-08\cactus Ridge 404\MDT\Exhibit11.dwg



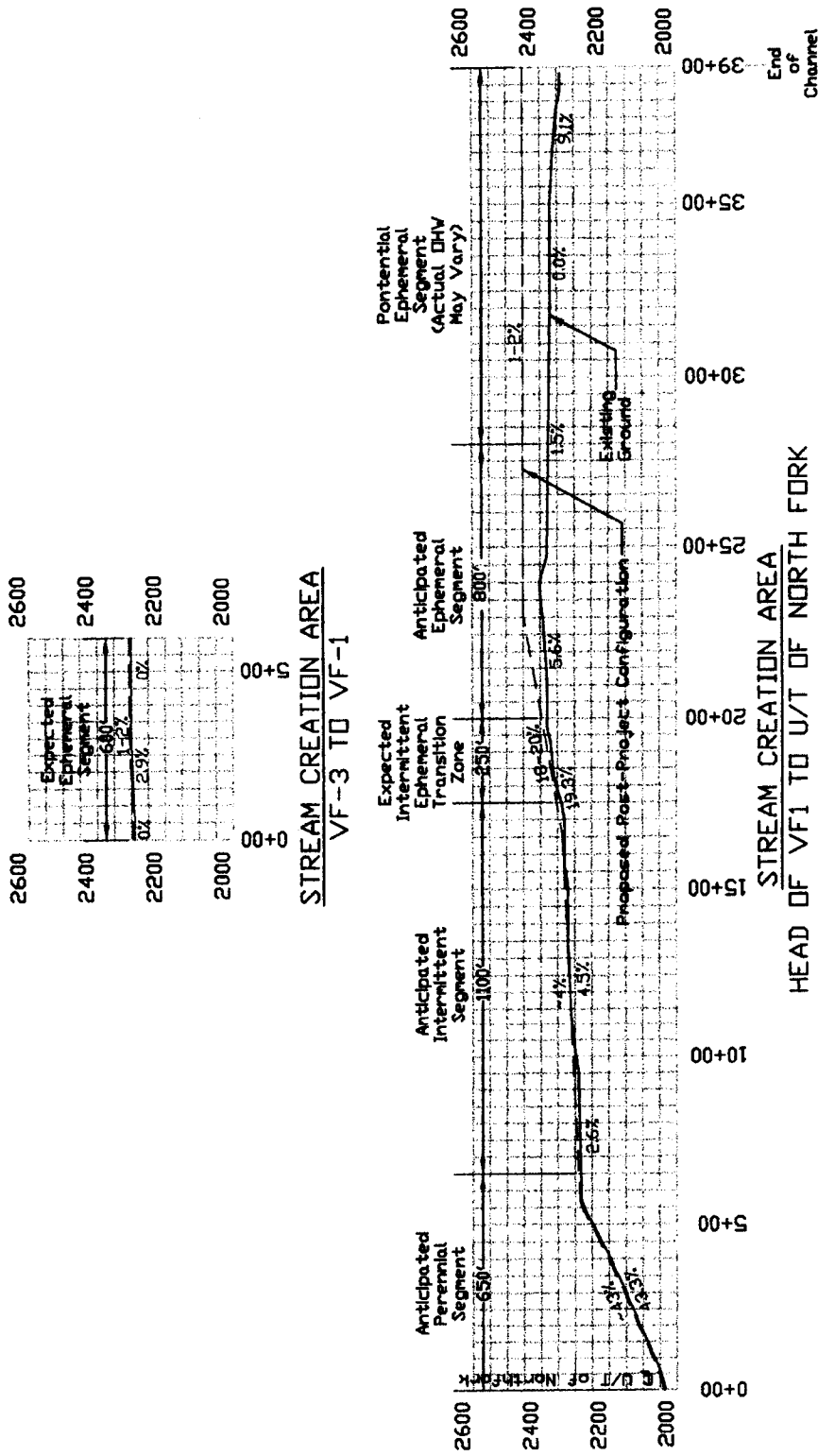
CACTUS RIDGE VALLEY FILL NO. 1
MID-VOL COAL SALES, INC.

P.O. BOX 196
 HORSEPEN, VA 24619

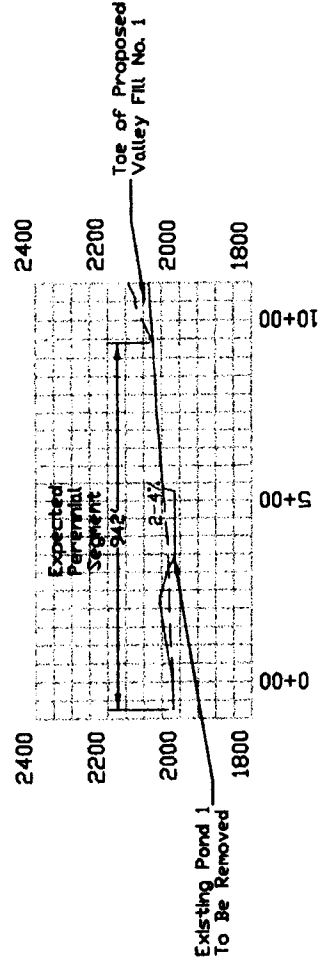
SCALE	1"=2000 FT.	COMPENSATORY MITIGATION PLAN PROPOSED MITIGATION AREA U/T OF NORTH FORK
DATE	MARCH 2005	
BY	NREI-MOT	
DWG. NO.	CS\27\27-09\Cactus Ridge 404\WOT\Comp_C4.dwg	EXHIBIT C4



<p>LEGEND</p> <ul style="list-style-type: none"> ile - Expected Int/Eph Transition Zone p - Expected Perennial Segment i - Expected Intermittent Segment e - Expected Ephemeral Segment 0+00 - Stream Delineation Station
<p>EXHIBIT C5</p>
<p>MID-VOL COAL SALES, INC.</p>
<p>Cactus Ridge Valley Fill No. 1 Compensatory Mitigation Plan Proposed Mitigation and Stream Restoration Area U/T of North Fork of Big Creek</p>
<p>SCALE: 1"=400 FT. MARCH 2005 <small>21/27/27-01/Cactus Ridge 404 WOT/ExhibitC5.dwg</small></p>



STREAM CREATION AREA
HEAD OF VF1 TO U/T OF NORTH FORK



RESTORATION AREA
U/T OF NORTH FORK

CACTUS RIDGE VALLEY FILL NO. 1
MID-VOL COAL SALES, INC.

P.O. BOX 196
HORSEPEN, VA 24619

SCALE 1" = 500' H&V

DATE MARCH 2005

BY LDP

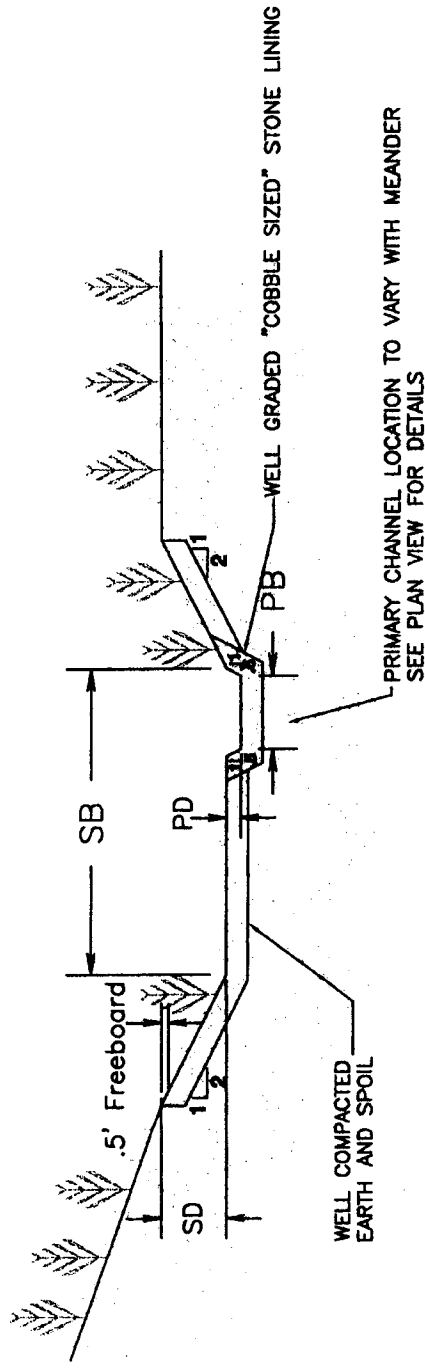
COMPENSATORY MITIGATION PLAN
RESTORATION/CREATION PROFILES

EXHIBIT
C6

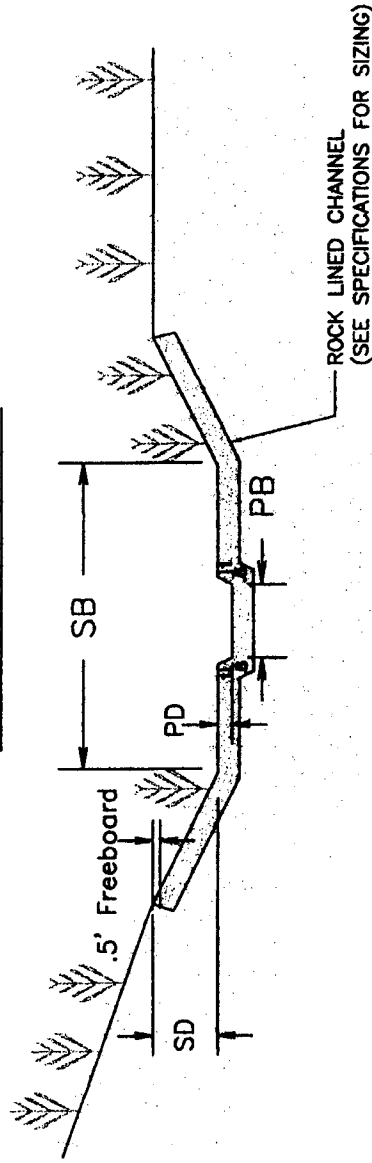
DWG. NO.

Exhibit_C6.Dwg

- PD = PRIMARY CHANNEL DEPTH
 PB = PRIMARY CHANNEL BOTTOM WIDTH
 SD = SECONDARY CHANNEL DEPTH
 SB = SECONDARY CHANNEL BOTTOM WIDTH
- ① 1.5 YEAR RECURRENCE
 ② 100 YEAR RECURRENCE



SHALLOW GRADE SECTION



STEEP GRADE (FLUME) SECTION

TYPICAL CROSS SECTIONS
 NOT TO SCALE

NOTE: See Exhibit No. C7.1 for Proposed
 Channel Dimensions and
 Channel Material Detail

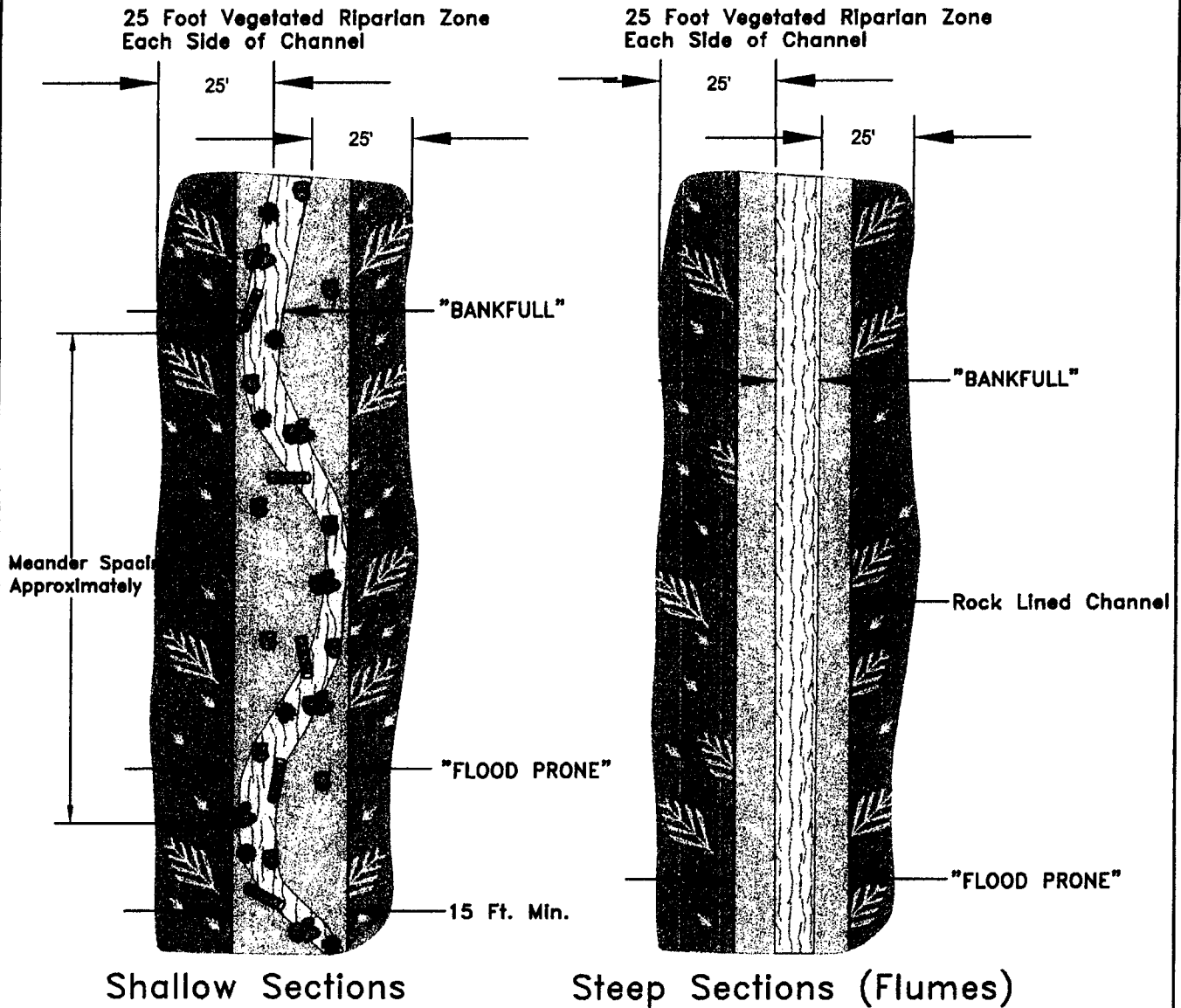
EXHIBIT C7

MID-VOL COAL SALES, INC.

Cactus Ridge Valley Fill No. 1
 COMPENSATORY MITIGATION PLAN
 STREAM CREATION (ESTABLISHMENT) DETAIL
 Shallow and Steep (Flume) Sections





SCALE: N.T.S.

MARCH 2005



Structure to be sporadically placed (after bond release)

No Meander - No Structure

-  Boulders
-  Boulder Clusters
-  Large Woody Debris (LWD)
-  Root Wads

NOTE: It is anticipated that the ditches will be constructed with a small dozer and backhoe and shaped into the final spoil material. After shaping and tracking, the ditch will have channel and substrate dimensions approximating the specifications shown in Exhibit No. C7.1

PLAN VIEW
NOT TO SCALE

EXHIBIT C8
<i>MID-VOL COAL SALES, INC.</i>
Cactus Ridge Valley Fill No. 1 COMPENSATORY MITIGATION PLAN STREAM CREATION (ESTABLISHMENT) DETAIL PLAN VIEW
SCALE: N.T.S.
MARCH 2005

EXHIBIT C7.1 **TYPICAL CHANNEL DIMENSION DETAIL**

Side Slopes			Channel Characteristics					Substrate Composition					Design Storm	
From Station	To Station	Channel Type	Left	Right	SD (ft)	SB (ft)	PD (ft)	PB (ft)	Grade (%)	Dmax (inches)	D50 (inches)	Dmin (inches)		Blanket Thickness (inches)
U/T of North Fork (Re-establishment)														
39+00	29+00	Secondary	2:1	2:1	3.00	15			2.0	15	12	5	18	100yr/24hr
		Primary	1:1	1:1			1.75	6	2.0	15	12	5	18	1.5yr/24hr
29+00	23+00	Secondary	2:1	2:1	3.00	15			2.0	15	12	5	18	100yr/24hr
		Primary	1:1	1:1			1.75	6	2.0	15	12	5	18	1.5yr/24hr
23+00	17+00	Secondary	2:1	2:1	2.00	15			20.0	38	30	12	45	100yr/24hr
		Primary	1:1	1:1			0.75	8	20.0	15	12	5	18	1.5yr/24hr
17+00	6+50	Secondary	2:1	2:1	2.75	15			4.0	24	18	7	24	100yr/24hr
		Primary	1:1	1:1			1.50	6	4.0	15	12	5	18	1.5yr/24hr
6+50	0+00	Secondary	2:1	2:1	1.50	15			43.0	bedrock	bedrock	bedrock	bedrock	100yr/24hr
		Primary	1:1	1:1			n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
6+50	-6+00	Secondary	2:1	2:1	1.25	15			2.0	15	12	5	18	100yr/24hr
		Primary	1:1	1:1			0.50	6	2.0	15	12	5	18	1.5yr/24hr

Note: Typical Design for Illustrative Purposes
Actual Dimensions Would Vary with Actual Grade & Drainage Area